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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,530	12/05/2003	Thomas F. Fakes	MSI-1704US	1900
22801	7590	10/04/2007	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			DINH, MINH	
			ART UNIT	PAPER NUMBER
			2132	
			MAIL DATE	DELIVERY MODE
			10/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/729,530	FAKES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Minh Dinh	2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,15-30,35,36,42,43,47-49,52 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-14,31-34,37-41,44-46,50 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/05/03; 12/21/06; 7/26/07</u>                               | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Invention II (i.e., species b) associated with claims 1-22, 31-32, 40-46, and 50-53 in the reply filed on 07/26/07 is acknowledged. Applicant withdraws claims 23-30, 33-39 and 47-49 from consideration. However, claims 33-39 are associated with Invention II and claims 15-22 are associated with Invention I. Applicant's representative, Mr. Damon Kruger, agreed via telephone on 09/24/07 to elect, without traverse, claims 1-14, 31-46, and 50-53 associated with Invention II for prosecution, and withdraw claims 15-30 and 47-49 associated with Invention I from consideration.

Within Invention II, the claims are directed to the following patentably distinct species: (IIa) a species of switching technique comprises calling, for each of the plurality of the security engines, a function exposed by the security engine (claims 4, 34, 41 and 51); (IIb) a species of switching technique comprises writing a value to a shared data structure (claims 5, 35, 42 and 52); and (IIc) a species of switching technique comprises firing an event across all of the security engines at once (claims 6, 36, 43 and 53). The species are independent or distinct because they are mutually exclusive features (i.e., only one technique is used at a time). Mr. Kruger also agreed via telephone on 09/24/07 to elect, without traverse, claims 4, 34, 41 and

51 associated with Invention IIa for prosecution, and withdraw claims 5-6, 35-36, 42-43 and 52-53 associated with Invention IIb and IIc from consideration.

Affirmation of this election must be made by applicant in replying to this Office action.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 31-34 and 37-39 are rejected under 35 U.S.C. 101. Claims 31-34 and 37-39 are directed to a computer readable medium having instructions. Such a computer readable medium includes encoded signals (see Specification, page 26, 1<sup>st</sup> paragraph), which does not fall within one of the four statutory classes of § 101. Applicant is suggested to change the claimed subject matter from "a computer readable medium" to "a computer storage medium" (see Specification, page 25). Please refer to Annex IV of *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, 1300 Off. Gaz. Pat. Office 142 (Nov. 22, 2005) (Patent Subject Matter Eligibility Interim Guidelines).

4. Claims 50-51 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 50-51 are not tangibly embodied as it is only software *per se*. For a system or an apparatus or a machine to be a physical object, at least one recited element must be hardware. Since all elements of the claim can be reasonably interpreted in light of the disclosure by one of ordinary skill as software alone (page 19, lines 9-12), the claim is directed to software *per se* and is non-statutory.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4, 7-14, 31-34, 37-41 and 44-46 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01.

- Regarding claims 1-4 and 7-14, the omitted steps are: steps 306-312 and 316 as disclosed in figure 3.
- Regarding claims 31-34 and 37-39, the omitted steps are: steps 306-310 and 316 as disclosed in figure 3.

- Regarding claims 40-41 and 44-46, the omitted steps are: steps 304-310 and 316 as disclosed in figure 3.

7. Claims 50-51 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the elements that perform steps 306-312 and 316 as disclosed in figure 3.

8. Claims 50-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what the structures corresponding to the means-plus-function limitations are in the specification.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-2, 7-13 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miliefsky (US 2005/0044418 A1) in view of Moshir et al. (US 2004/0003266 A1). Miliefsky discloses a computing device comprising a plurality of security engines each having a current security policy (i.e., an INFOSEC ENGINE with plug-in components such as a firewall engine, an antivirus engine, an intrusion detection engine, a vulnerability analysis engine, a denial-of-service engine, etc.) (Fig. 7; paragraph 0039). Miliefsky also discloses updating the security policies (i.e., performing security updates and upgrade patches for the plug-in components) (paragraph 0041). Miliefsky does not disclose switching, after each of the plurality of security engines is ready to begin using new security policy, each of the plurality of security engines to the new rules substantially concurrently. Moshir discloses a method and system for updating security policies for a plurality of security engines (i.e., antivirus software files, a security fix/patch) (paragraphs 0059, 0181). Specifically, Moshir discloses that the security policies for the plurality of security engines are updated at the same time, i.e., a scheduled rollout, and each security engine is to report the result of the update, whether a success or a failure/error. Moshir further discloses that if a failure is detected, an order is issued to the security engines to rollback to their previous state; otherwise, the rollout is successful and the new security policy is in effect (paragraphs 0030, 0074-

0078, 0190). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Moshir's method of updating security policies into Miliefsky's system. The motivation for doing so would have been to leave the network in a usable state in case of a faulty update (paragraph 0045).

11. Claims 3-4, 14 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miliefsky in view of Moshir as applied to claims 1, 13 and 50 above, and further in view of Date ("An Introduction to Database System"). Moshir discloses that the security engines receive a system-wide rollback if any of the security engines has failed to process the new security policy; however, Moshir does not disclose that the security engines receive a system-wide commit command (i.e., an indication such as a function call to switch to the new policy) if all of the security engines have successfully processed the new security policy. Date, in addition to a system-wide rollback as described in Moshir, discloses a two-phase commit protocol used in an update operation involving multiple participants whereby each participant receives a system-wide commit command if all of the participants have successfully processed the update (page 463). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method and system of Miliefsky and Moshir to utilize



a system-wide commit command, as taught by Date. The motivation for doing so would have been to guarantee that all updates could happen in unison (page 463, 1<sup>st</sup> paragraph).

12. Claims 31-34, 37-41, 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshir in view of Date. Moshir discloses a method comprising: receiving an indication of a new security policy to be used (i.e., new antivirus software files, a security fix/patch); generating a new set of rules from the new security policy (i.e., performing updating of the file/fix/patch) (paragraphs 0030, 0059, 0074-0078); and switching to the new security policy unless a system-wide rollback command is received (paragraphs 0030, 0059, 0074-0078). Moshir does not disclose waiting for a system-wide commit command before switching to the new security policy. Date, in addition to a system-wide rollback as described in Moshir, discloses a two-phase commit protocol used in an update operation involving multiple participants whereby each participant receives a system-wide commit command if all of the participants have successfully processed the update (page 463). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Moshir to utilize a system-wide commit command, as taught by Date. The motivation for doing

so would have been to guarantee that all updates could happen in unison (page 463, 1<sup>st</sup> paragraph).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,158,010 to Moriconi et al.

U.S. Patent No. 6,684,244 to Goldman et al.

U.S. Patent No. 7,000,247 to Banzhof

U.S. Patent App. Publication No. 2005/0262362 to Patrick et al.

Dubie, "LANDesk punches up patch management suite"

Ulfelder, "Practical patch management"

"Database Two Phase Commit – Software Technology Review"


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Dinh whose telephone number is 571-272-3802. The examiner can normally be reached on Mon-Fri: 10:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MD/  
Minh Dinh  
Examiner  
Art Unit 2132

9/30/07

  
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